IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

MONDAY, THE 8TH OCTOBER 2007 / 16TH ASWINA 1929

WP(C).No. 28975 of 2007(Y)

PETITIONER:

DEVARAJAN, AGED 52 YEARS, S/O GOPALAN,
MANOJ VILASAM, MANCHALLOOR P.O.,
PATHANAPURAM VILLAGE, PATHANAPURAM TALUK,
KOLLAM DISTRICT.

BY ADV. SRI.C.C.THOMAS

RESPONDENTS:

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1. THE ASST.EXCISE COMMISSIONER,
KOLLAM.

2. THE EXCISE COMMISSIONER,
THIRUVANANTHAPURAM.

3. STATE OF KERALA REPRESENTED BY
SECRETARY, TAXES(A) DEPARTMENT,
GOVT.SECRETARIAT, THIRUVANANTHAPURAM.

BY GOVT. PLEADER SMT. ANU SIVARAMAN.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 08/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.M.JOSEPH, J.

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WP.(C) No.28975 of 2007

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Dated this the 8th day of October, 2007

JUDGMENT

Petitioner challenges Ext.P1 to the extent it cancels licences of toddy shop Nos. 10, 11 and 12 in Group No.III in Pathanapuram Excise Range and also seeks a direction to consider and pass orders on Ext.P2. A declaration is also sought that the petitioner is entitled to continue in respect of the said shops. As far as Ext.P2 is concerned, it is a petition under Rule 12 of the Kerala Abkari Shops Disposal Rules. Rule 12 vests power with the authority to suo motu revise the order. It does not lie on an application. Of course it is open to the authority to exercise the power under Rule 12 to revise it. In fact when an application is moved, it can also be acted upon. But there is no legal right for a party to insist that the power should be exercised under Rule 12. Learned counsel for the petitioner Sri. C.C.Thomas would contend that even going by Ext.P1 order the first respondent is directed to take immediate steps for resale of the toddy shops in the above groups as per rules. According to him in such an event the petitioner is entitled

to get preference. He also points out that in fact Ext.P1 is dated 1.9.2007 and even though more than one month has elapsed, no steps are taken. Learned Government Pleader submits that the case of the petitioner can be considered in accordance with law when resale is conducted in terms of Ext.P1. I feel that a time limit can be fixed.

Accordingly, the writ petition is disposed of directing respondents 1 and 2 to take necessary steps to conduct resale of the shops in question in accordance with law as directed in Ext.P1 as expeditiously as possible and at any rate within a period of one month from the date of receipt of a copy of this judgment. In the event of such resale of the toddy shops in question, the case of the petitioner for preference will be considered in accordance with law.

(K.M. JOSEPH, JUDGE)

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